No. 18-422

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT RUCHO, *et al.*,
Appellants,
v.

COMMON CAUSE, *et al.*,
Appellees.

On Appeal from the United States District Court
for the District of North Carolina

BRIEF FOR THE STATES OF OREGON, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, IOWA, KENTUCKY, MAINE, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, PENNSYLVANIA, RHODE ISLAND, VERMONT, WASHINGTON, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF APPELLEES

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QUESTION PRESENTED

Does a state engage in unconstitutional partisan gerrymandering when it draws congressional districts for the purpose of long-term antimajoritarian partisan entrenchment, the new districts have that effect, and there is no justification for the districts other than maximizing partisan advantage?

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INTEREST OF THE AMICI STATES

This case is about how to strike the right constitutional balance between ensuring fair elections and respecting the normal political process. The amici States are uniquely qualified to assist the Court in striking that balance. We have a strong interest in ensuring that our elections reflect core democratic principles. Many of us are also defendants in redistricting litigation and have an equally strong interest in ensuring that the courts apply reasonable and manageable legal standards in cases like this one.

The States have a wealth of experience with redistricting and, as explained below, have taken a wide variety of approaches to prevent invidious partisan gerrymandering in that process. That is as it should be in our federalist system, and we do not suggest that any one approach to redistricting ought to be enshrined in constitutional law. But we are united in our conclusion that the Constitution sets outer limits on partisan gerrymandering, that those limits are judicially enforceable and do not intrude on the States' legitimate interests, and that on the facts found by the district court here, North Carolina's congressional districting map exceeded the outer limits of what is constitutional.[1]

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[1] Although the district court in this case relied on multiple bases to strike down the districting map, this brief focuses on the arguments under the Equal Protection Clause.

SUMMARY OF ARGUMENT

Deliberately drawing districts for the purpose of keeping one party in power for the long term, and without any neutral justification for the result, has no place in our political system. It discourages voter participation, increases distrust of government, and reduces the responsiveness of elected representatives. Technological advances have made it easier than ever for mapmakers to draw district lines solely to maximize the political power of a particular party.

A purpose-and-effects test is a manageable legal standard that prohibits the most egregious examples of partisan gerrymandering while still respecting the legitimate considerations that inform redistricting decisions. It requires proof of both invidious intent and a partisan-entrenching result that cannot be explained by neutral considerations. A proper understanding of this standard's limits should allay any fear that the standard would invalidate numerous state districting maps. The district court correctly struck down North Carolina's congressional districting map not because it failed one particular metric in a single year, but because it was invidiously intended to entrench a single party in power, it achieved that purpose and likely would continue to do so for the life of the plan, and the admitted goal of partisan entrenchment was the only explanation for the extreme partisan skew of the map.

Indeed, North Carolina's map maximized partisan advantage to a greater extent than 99 percent of all possible districting maps based on neutral criteria.

Although this Court has in the past struggled to identify "[h]ow much political motivation and effect is too much," *Vieth v. Jubelirer*, 541 U.S. 267, 297 (2004) (plurality op.), that question should pose little difficulty where, as here, the evidence effectively amounts to a mathematical demonstration that North Carolina sought and obtained the maximum amount of partisan advantage possible and that all legitimate considerations were subordinated in pursuit of partisan advantage.

A purpose-and-effects test leaves ample room for States to continue to experiment with different approaches to redistricting. Many States have taken steps to limit or prevent partisan abuse of the redistricting process, including having nonpartisan or bipartisan groups draw the maps, banning consideration of partisan affiliation or other data in the map-making process, or requiring supermajority votes. The Constitution does not require any of these approaches, but they show that partisan politics is not an inevitable feature of redistricting.

ARGUMENT

Voting forms the foundation of our representative democracy. It serves as a vehicle for voicing preferences and for holding lawmakers accountable to constituents. No other mode of civic participation conveys the will of the people as well as voting. Extreme partisan gerrymandering threatens the benefits that our polity realizes from voting. The courts can and should play a role in protecting those benefits.

A. Extreme partisan gerrymandering harms the States and their citizens, and technological advances have made it easier to accomplish.

Gerrymandering has played a role in American politics since the early eighteenth century. *Vieth*, 541 U.S. at 274–75 (plurality op.); Samuel S.-H. Wang, *Three Tests for Practical Evaluation of Partisan Gerrymandering*, 68 Stan. L. Rev. 1263, 1266–67 (2016) (describing historical examples). Both major parties have engaged in partisan gerrymandering. *See, e.g.*, *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 410–13 (2006) (plurality op.) (describing Texas plans that favored Democrats at one time and Republicans at another).

But what is not a normal or accepted redistricting practice is purposefully entrenching a single political party in power for the long term under any realistic electoral scenario, regardless of whether a majority of voters support that party. Although this Court has not yet announced a standard for assessing the legality of partisan gerrymandering, it has recognized unanimously that extreme partisan gerrymandering violates the Constitution. *See Vieth*, 541 U.S. at 292–93 (plurality op.) ("We do not disagree with [the] judgment" that "severe partisan gerrymanders [are incompatible] with democratic principles"; "[t]he issue . . . is not whether severe partisan gerrymanders violate the Constitution, but whether it is for the courts to say when a violation has occurred"; "an *excessive* injection of politics is *un*lawful") (emphasis in original); *id.* at 312 (Kennedy, J., concurring in the judg-

ment) ("If a State passed an enactment that declared 'All future apportionment shall be drawn so as most to burden Party X's rights to fair and effective representation, though still in accord with one-person, one-vote principles,' we would surely conclude the Constitution had been violated."); *id.* at 326 (Stevens, J., dissenting) ("State action that discriminates against a political minority for the sole and unadorned purpose of maximizing the power of the majority plainly violates the decisionmaker's duty to remain impartial."); *id.* at 343 (Souter, J., dissenting) ("[I]f unfairness is sufficiently demonstrable, the guarantee of equal protection condemns it as a denial of substantial equality."); *id.* at 356 (Breyer, J., dissenting) (describing "a set of circumstances in which the use of purely political districting criteria could conflict with constitutionally mandated democratic requirements"); *see also Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2568 (2015) ("Partisan gerrymanders, this Court has recognized, are incompatible with democratic principles.") (quotation marks and brackets in original omitted). And a majority of this Court has never abandoned the view, established in *Davis v. Bandemer*, 478 U.S. 109, 125 (1986), that those constitutional limitations are judicially enforceable. *Vieth*, 541 U.S. at 309–10 (Kennedy, J., concurring in the judgment); *id.* at 326 (Stevens, J., dissenting); *id.* at 343 (Souter, J., dissenting); *id.* at 356 (Breyer, J., dissenting).

Extreme partisan manipulation of the redistricting process is problematic because it can effectively insulate a political party from any realistic attempt by the populace to unseat it. Sam Hirsch, *The United*

States House of Unrepresentatives: What Went Wrong in the Latest Round of Congressional Redistricting, 2 Elec. L. J. 179, 202 (2003). In other words, political control may be determined by the mapmakers, not the voters. *Id.*

Enormous improvements in computer technology have revolutionized the way in which districts can be drawn, allowing even more invidious partisan entrenchment. *See* Laura Royden & Michael Li, Brennan Center for Justice, *Extreme Maps* 3 (2017)[2] ("Technology and a growing flood of money into the redistricting process are, by broad consensus, only making the situation" of partisan gerrymandering "worse."); Theodore R. Boehm, *Gerrymandering Revisited—Searching for a Standard*, 5 Ind. J. L. & Soc. Equality 59, 60 (2016) ("[M]odern technology has substantially facilitated a temporary majority's ability to perpetuate its dominance of a legislative body."). Today, mapmakers can draft and change many different proposed maps in rapid succession using electronic databases, computer software, and statistical techniques. Wang, *supra*, at 1267; *see also Vieth*, 541 U.S. at 312 (Kennedy, J., concurring in the judgment) ("Computer assisted districting has become so routine and sophisticated that legislatures, experts, and courts can use databases to map electoral districts in a matter of hours, not months.").

Along with improvements in computer technology, "advances in communication technology have made it

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[2] *Available* at http://www.brennancenter.org/sites/default/files/publications/Extreme%20Maps%205.16.pdf (last accessed Feb. 11, 2019).

possible to gather fine-grained data to micro-target[] district boundaries." Micah Altman & Michael McDonald, *The Promise & Perils of Computers in Redistricting*, 5 Duke J. Const. L. & Pub. Pol'y 69, 77 (2010). States receive and store vast amounts of highly detailed data to use in redistricting—including data from the Census Bureau about race, ethnicity, age, voting history, health coverage, and work status. Catherine McCully, U.S. Bureau of the Census, *Designing P.L. 94-171 Redistricting Data for the Year 2020 Census: The View from the States* 5, 17–18, 22 (2014).[3] Mapmakers can supplement the Census Bureau's population information with election-related data including on partisan affiliation and voting history. Kenneth F. McCue, California Inst. of Tech., *Creating California's Official Redistricting Database* 5–8 (2011).[4]

Mapmakers can use mapping programs to evaluate the effects of drawing a line in one place or the next block over, recalculating how the new districts will affect a plan's adherence to various redistricting criteria. McCully, *supra*, at 8; *see also Brown v. Iowa Legislative Council*, 490 N.W.2d 551, 552–53 (Iowa 1992) (describing how factors can be added or removed in computer generated redistricting maps); Richard L. Engstrom & Michael D. McDonald, *Quantitative Evidence in Vote Dilution Litigation: Political*

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[3] *Available at* https://www.census.gov/content/dam/Census/library/publications/2014/rdo/pl94-171.pdf (last accessed Feb. 11, 2019).

[4] *Available at* http://statewidedatabase.org/d10/Creating%20CA%20Official%20Redistricting%20Database.pdf (last accessed Feb. 11, 2019).

Participation & Polarized Voting, 17 Urb. Law. 369, 373–77 (1985) (explaining the use of regression analyses and other calculations to predict whether voters belonging to particular racial minority group vote for specific candidates). More detailed data and computer-based district mapping provide the means to create maps that "give undue advantage to whichever political party controls redistricting." Wang, *supra*, at 1269. Thus technological tools enable States to draw and evaluate district boundaries "in exquisite details" and "enhance the possibility that gerrymandered districts may be more durable now than they were even ten years ago." *Id.* at 1267–68.

Durable party entrenchment through extreme gerrymandering causes real, identifiable harms to the democratic system, and to individual voters. It undercuts the fundamental premise that our republican form of government is representative. Moreover, by allowing fewer competitive races, it discourages voter participation, makes the public more distrustful of government, and reduces the responsiveness of elected representatives. Boehm, *supra*, at 62; D. Theodore Rave, *Politicians As Fiduciaries*, 126 Harv. L. Rev. 671, 684–85 (2013); Daniel R. Ortiz, *Got Theory?*, 153 U. Pa. L. Rev. 459, 486–87 (2004). And it subverts the very purpose of periodic redistricting, which is to make Congress more responsive—not less responsive—to voters. Ortiz, *supra*, *at* 476–77 ("Nearly every special feature of the House's design" including direct election, regular reapportionment, and frequent elections, "was meant to ensure that it, unlike the other primary structures of the federal government, was highly responsive to public sentiment.").

Of course, there are entirely legitimate reasons why a State may have noncompetitive elections. Voters may simply prefer the policies of one party over the other overwhelmingly. Or voters with similar political views may tend to cluster in the same areas, meaning that district lines drawn based on reasonable geographic considerations will favor one particular party. Or one party may be poorly organized, leading it to field candidates who have no real chance of garnering majority support. Those circumstances by themselves are not constitutionally problematic. On the contrary, they reflect the ordinary democratic process working as it should to reflect the will of the people.

What are problematic, however, are extreme districting maps that are invidiously intended to, and do, ensure noncompetitive elections *despite* the absence of the kinds of normal political considerations described above. Those maps inflict avoidable harms on the democratic process and on individual voters, and undermine the public's trust in government. The amici States have a strong interest in preventing those harms.

B. A purpose-and-effects test is manageable and adequately accounts for the States' legitimate interests.

Any test for unconstitutional partisan gerrymandering should require proof of both invidious intent *and* the actual effect of extreme partisan entrenchment that is likely to endure through multiple election cycles and is inexplicable by neutral considera-

tions. The map at issue here fails that test, and the district court's judgment therefore should be affirmed. Properly applied, however, a purpose-and-effects test should not call into question the vast majority of state districting maps. Even a map under which one party achieved an entrenched, long-lasting partisan advantage would be constitutional unless the map was adopted with invidious intent and the effect could not be explained by neutral factors. Amici anticipate that such cases will be rare, and that under a purpose-and-effects test, the States will continue to enjoy broad latitude in conducting redistricting.

1. Invidious intent is required and is satisfied when a map is chosen for the purpose of entrenching a party against any realistic majoritarian challenge.

Under a purpose-and-effects test, it is not enough for a plaintiff to show that a State's districting map has the *effect* of entrenching one political party in power. Rather, the plaintiff must also show that this was the *purpose* of adopting the map.

Invidious intent is a necessary component of the constitutional standard. This Court's equal protection jurisprudence holds that a law's "disproportionate impact," standing alone, is insufficient to show a constitutional violation. *Washington v. Davis*, 426 U.S. 229, 239 (1976). Instead, "a purpose to discriminate" must be established. *Id.* (quoting *Akins v. Texas*, 325 U.S. 398, 403-04 (1945)); *cf. Cooper v. Harris*, 137 S. Ct. 1455, 1463-64 & n.1 (2017) (explaining the

required "legislative intent" showing for a claim of racial gerrymandering under the Equal Protection Clause).

And not just any consideration of voters' political affiliation will establish *invidious* intent. In *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973), for example, this Court drew a distinction between the use of political affiliation in the redistricting process to "provide a rough sort of proportional representation in the legislative halls of the State," and its use "to minimize or eliminate the political strength of any group or party," suggesting that the former was permissible and that the latter was not.

When it comes to proof of invidious partisan intent, however, this case is not a close one. There is no serious dispute that the map at issue here was adopted with the express purpose of maximizing Republicans' partisan advantage to the greatest extent possible. Representative Lewis, one of the co-chairs of North Carolina's Joint Select Committee on Congressional Redistricting, made no secret that the goal of the map was to manipulate elections to elect candidates from his favored party regardless of what the majority of voters wanted in any given election: he stated, "I think electing Republicans is better than electing Democrats. So I drew this map to help foster what I think is better for the country." Pet. App. 24. He stated further that the map was drawn "to give a partisan advantage to 10 Republicans and 3 Democrats because [he] d[id] not believe it[would be] possible to draw a map with 11 Republicans and 2 Democrats." Pet. App. 22. And if those statements leave

any doubt as to the purpose of the map, Representative Lewis also "acknowledg[ed] freely that this would be a political gerrymander," which Representative Lewis believed was "not against the law." *Id.*; *see also* Pet. App. 11, 17 (the "primar[y] goal" of co-chairs Lewis and Rucho was "create as many districts as possible" in which Republicans would likely win elections, and "partisanship considerations were the principal factor governing [the] placement of district lines within split counties").

In carrying out that goal, co-chairs Rucho and Lewis commissioned Dr. Thomas Hofeller to draw the 2016 Plan. Dr. Hofeller used past election data to draw a map that systematically "cracked" and "packed" Democratic voters to maximize Republican voting strength and minimize Democratic voting strength. *See* Pet. App. 12-13 ("All told, Dr. Hofeller testified that he redrew Districts 2, 3, 6, 7, 8, 9, 11, and 13 to increase Republic voting strength in those districts, and, to do so, he concentrated Democratic voters in Districts 1, 4, and 12."). Subsequent analyses of the map—which the district court credited—revealed that it "creates 3 to 4 more Republican seats than what is generally achievable" using neutral map-drawing criteria, and that is ultimately is more advantageous to Republicans than *99 percent* of all such districting plans. Pet. App. 210-11. Those analyses rest on precisely the same premise that guided Dr. Hofeller in creating the map itself—*i.e.*, the premise that "past voting behavior" as reflected in "past election results" is "the best predictor" of future election outcomes. App. 11; *see also* App. 175–77 (so noting, and explaining the difficulty in reconciling de-

fendants' argument that voter behavior should not be inferred from party affiliation with defendants' use of precisely that assumption in creating the map for the express purpose of maximizing partisan advantage in future elections).

Because it incorporates a requirement of invidious intent, a purpose-and-effects test should leave States with plenty of leeway to experiment with different approaches to redistricting. So long as a districting plan is not adopted for the specific purpose of entrenching a single party in power, there is no constitutional violation. No sophisticated statistical analysis of a state's maps is required.

2. The test also demands long-term partisan-entrenching effects that cannot be justified by other legitimate considerations.

A purpose-and-effects test also requires proof that the districting map was likely to have its intended effect: that it would ensure that one party remained in power under any likely electoral scenario regardless of shifts in voter allegiance. The court also would have to find that this effect could not be explained by any legitimate, neutral considerations, such as the State's political geography or its efforts to comply with the Voting Rights Act. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (identifying as legitimate considerations "making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives").

This attention to effects is also an appropriate part of the constitutional standard. As in other kinds of cases, a plaintiff must show "a burden, as measured by a reliable standard, on the complainants' representational rights." *League of United Latin Am. Citizens*, 548 U.S. at 418 (plurality op.). Thus, a districting map is not an unconstitutional partisan gerrymander unless it in fact achieves extreme, long-term partisan entrenchment.

This means that States have ample room to try different approaches to redistricting without running afoul of the Constitution. Here too, the technologies that make it easier to engage in invidious partisan gerrymandering also give the States the tools to avoid liability. States can and do use computer programs to draw multiple maps that satisfy various legitimate criteria, make detailed predictions about electoral results under a range of possible scenarios, and determine whether any particular map gives one party or the other an unfair advantage.

And even if the map a State chooses does appear to give advantage to a party, sophisticated software can help the State determine if the advantage is caused by political geography or some other legitimate consideration. In other words, it can show if the predicted effects of the map on partisan entrenchment can be explained by neutral factors, in which case the map should pass constitutional scrutiny. *Cf. Vieth*, 541 U.S. at 312–13 (Kennedy, J., concurring in the judgment) (noting that "new technologies may . . . make more evident the precise nature of the burdens

gerrymanders impose on the representational rights of voters and parties").

Most importantly, if this Court endorses particular metrics as relevant to the effect prong of the test, States will be able to model those metrics and ensure that their maps stay within the bounds this Court sets. Of course, no single metric is likely to satisfy the effects prong by itself. As the district court explained, no one is asking the judiciary to enshrine any particular statistical measure of partisanship into the Constitution. Instead, metrics such as the efficiency gap showing that a map is an extreme partisan outlier merely "provide *evidence* that" it violates constitutional standards. Pet. App. 122. Thus, if a State's election results in a single year yielded a high efficiency gap, that alone would not likely satisfy the effects prong. And even if it did, the map still would be upheld if the effect could be explained by something other than intentional partisan entrenchment, such as that members of one party tend to cluster more in particular parts of the State than do members of the other party, or that the State has large numbers of uncontested elections. Regardless, the same metrics that might be used as evidence in litigation can also be used prophylactically by States to ward off constitutional challenges.

In this case, the district court analyzed the effects of congressional districting map with proper deference to legitimate state interests. It found that the map, by cracking and packing voters in particular districts based on their likely support of Democratic candidates, entrenched Republican representatives in

office. Pet. App. 187. And the district court further found that that discriminatory effect is likely to persist in subsequent elections. *Id.* at 190. Those findings of the district court are amply supported by the evidence of actual election results and expert analyses of those election results. *Id.* at 187–214 (discussing statewide evidence of discriminatory effects); *id.* at 223–74 (discussing district-specific evidence of discriminatory effects). The statistical analyses showed that the partisan entrenchment achieved by the map would last at least through the life of the plan, even if a majority of voters supported non-Republican candidates at historic levels. *Id.* at 190–97. The court also found that the map's party-entrenching effects could not be explained by any legitimate state concerns or neutral factors bearing on the apportionment process, including North Carolina's natural political geography. *Id.* at 215–22.

Thus, the district court correctly held that the map was unconstitutional.

3. The test is not likely to invalidate many districting maps, especially in view of the steps many States have taken to prevent extreme partisan gerrymandering.

Properly applied, a purpose-and-effects standard will invalidate only the most extreme maps, like North Carolina's 2016 congressional districting map, where all legitimate considerations are subordinated to the single goal of long-term partisan entrenchment against any realistic majoritarian challenge. Those maps lie well outside our nation's historical tradi-

tions, and we expect that they will be rare—especially if this Court affirms here and thus makes it clear that there are constitutional limits on partisan entrenchment.

More generally, however, exclusive or near-exclusive focus on partisan ends is not an inevitable feature of redistricting. About half of the States have taken formal steps that reduce or eliminate the influence of partisan considerations on redistricting. This shows that partisan politics is not a necessary component of the redistricting process.

For example, many States require (or will soon require) congressional or state legislative districting maps to be drawn by a nonpartisan or bipartisan commission. *See, e.g.*, Alaska Const., art. 6, § 8; Ariz. Const., art. IV, pt. 2, § 1(3), 1(14); Cal. Const., art. XXI, § 1; Colo. Const. art. 5, §§ 44–48.4; Haw. Const., art. IV, §§ 2, 9; Idaho Const. art. III, § 2; Mich. Const., art. IV, § 6; Mo. Const. art. III, § 7; Mont. Const., art. V, § 14; N.J. Const., art. II, § 2, ¶ 1; N.J. Const., art. IV, § 3, ¶ 1; N.Y. Const., art. III, § 5-b; Ohio Const. art. XI, § 1; Ohio Rev. Code Ann. § 3521.01; Pa. Const. art. II, § 17; Wash. Const., art. II § 43. Even in a number of States where the legislature retains authority over redistricting, the initial task of recommending a map for legislative approval is delegated to a bipartisan committee or "advisory commission." *See, e.g.*, Conn. Const., art. 3, § 6; Iowa Code Ann. §§ 42.1, 42.5; Me. Const., art. IX, § 24; Mass. Sen. R. 12[5]; Mass. House R. 17 & 18A[6]; R.I. Pub.

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[5] *Available* at https://malegislature.gov/Laws/Rules/Senate (last accessed Feb. 11, 2019).

Laws 2011, ch. 106, § 1; R.I. Pub. Laws 2011, ch. 100, § 1; Vt. Const., ch II, § 73; Vt. Stat. Ann. tit. 17, §§ 1904-07. It is exceptionally unlikely that a districting map drawn through a nonpartisan or bipartisan process would reflect an invidious intent to achieve long-term partisan entrenchment over other, permissible goals.

Some states (including some which employ the nonpartisan or bipartisan commissions discussed above) also have chosen to limit the use of partisan affiliation to draw district lines, as a matter of state law. Some expressly bar state officials from drawing district lines for the purpose of favoring or disfavoring a political party. *See, e.g.*, Cal. Const., art. XXI, § 2(e); Del. Code Ann. tit. 29, § 804(4); Fla. Const., art. III, §§ 20, 21(a); Haw. Rev. Stat. Ann. § 25-2(b)(1); Iowa Code Ann. § 42.4(5); Mont. Code Ann. § 5-1-115(3); N.Y. Const., art. III, § 4(c)(5); Or. Rev. Stat. § 188.010(2); Wash. Const., art. II, § 43(5). Some also prohibit officials from using political data—such as past election results or voters' party registrations—in drawing districts. *See, e.g.*, Iowa Code Ann. § 42.4(5); Mont. Code Ann. § 5-1-115(3); *see also* Neb. Leg. Res. 102 (1st Session 2011). Arizona requires mapmakers to favor competitive districts, and prohibits the use of voting and party registration data from the initial mapping phase. Ariz. Const., art. IV, pt. 2, § 1(14)(F), 1(15). And Idaho prohibits dividing counties for the

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[6] *Available* at https://malegislature.gov/Laws/Rules/House (last accessed Feb. 11, 2019).

purpose of protecting a political party. Idaho Code Ann. § 72-1506.

Finally, States also have adopted procedures that make the adoption of extreme partisan gerrymanders unlikely as a practical matter. For example, some require a two-thirds supermajority to approve redistricting plans, thus making it easier for a minority party to block a plan that is unfair. Conn. Const., art. III, § 6; Me. Const., art. IV, pt. 1, § 3; *cf.* N.Y. Const., art. III, § 4(b)(1)-(3) (supermajority required only if both state legislative houses are controlled by the same party).

None of these particular steps is required as a matter of federal constitutional law. As discussed, in most States the legislature draws the district maps. These deliberative bodies can and routinely do redraw their maps free of any invidious purpose, and without presenting the risk of long-term partisan entrenchment that necessitates a judicial response. A constitutional standard prohibiting the most egregious forms of intentional partisan entrenchment therefore would still afford the States considerable leeway in their redistricting processes. It would also vindicate the core democratic principles enshrined in our Constitution.

CONCLUSION

The Court should affirm the district court's judgment.

Respectfully submitted,

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